

**BEFORE THE
COMMISSION ON COMMON OWNERSHIP COMMUNITIES**

In the matter of

WARING STATION
HOMEOWNERS ASSOCIATION
c/o The Management Group
1 Bank Street, Suite 250
Gaithersburg, Maryland 20878

Complainant,

vs.

Case No. 617-G

MULAND A. KALAW
NDJIMB C. KALAW
12006 Birdseye Terrace
Germantown, Maryland 20874

Respondents.

DECISION AND ORDER

The above-captioned case having come before the Commission on Common Ownership Communities for Montgomery County, Maryland (the "Commission") for hearing on August 20, 2003 pursuant to §§10B-5(i), 10B-9(a), 10B-10, 10B-11(e) 10B-12 and 10B-13 of the Montgomery County Code, 1994 as amended, and the duly appointed Hearing Panel, having considered the testimony and evidence of record, finds, determines and orders as follows:

Background and Summary of Testimony and Evidence

This matter comes before the Commission pursuant to a Complaint filed December 13, 2002 by Waring Station Homeowners Association in Germantown, Maryland ("Complainant") against the Muland A. Kalaw and Ndjimb C. Kalaw (collectively "Respondents"). At the August 20, 2003 hearing, Complainant was represented by Patrick L. O'Neill, Esquire.

The Respondents did not appear at the hearing on August 20, 2003. The Commission's Record, admitted as Commission Exhibit #1 contained the SUMMONS and STATEMENT OF CHARGES, indicating that each of the Respondents had been summoned to appear at the hearing.

Findings of Fact

Complainant is the governing body of the Waring Station Homeowners Association neighborhood of townhouses in Germantown Maryland, and Respondents are owners of a

townhouse in the community subject to the governing documents. The governing documents were contained in Commission's Exhibit #1 and were admitted into evidence. Complainant offered as its Exhibit #2 a copy of the recorded deed indicating Respondents' ownership of the townhouse located at 12006 Birdseye Terrace, Germantown, Maryland, on Lot 11, Block "A" "GUNNERS LAKE VILLAGE" (the "Subject Property"), which Exhibit was accepted as evidence.

Complainant called to the stand Alan Siefert, of The Management Group, manager of Waring Station Homeowners Association, as its only witness. Mr. Siefert testified he has managed this project for the past 8 years and had been involved in the disputes with the Respondents about the condition of their home since their purchase of the Subject Property in 1998. He testified that maintenance issues caused complaints to be received from other homeowners to the Complainant as early as May of 1998. Landscaping had been started and was left unfinished, screens were torn in various windows, fences were in poor repair, trash cans were left outside too long after trash pick-up, grass was often unkempt and unmowed, and trash was often left in the yard, including a discarded mattress.

Complainant offered as its Exhibit #1 a group of six pictures of the Subject Property, five taken August 15, 2003, and one taken in August of 2001, which were admitted. Mr. Seifert testified that the pictures demonstrated the poor maintenance and overall condition of the house and yard of the Subject Property and further testified that these pictures were representative of the usual condition of the Subject Property since 1998.

Mr. Seifert testified that the Board of Directors of the Complainant had discussed the condition of the Subject Property at a meeting held in late 2001 and had invited the Respondents to attend. However, the Respondents did not attend the meeting. Mr. Seifert also testified that he had personally talked with one of the Respondents on one occasion about the condition of the Subject Property, and although promises were made by Respondent that improvements would be made, nothing substantial had been done other than the removal of the torn screens.

Complainant in its closing, argued that the condition of the Subject Property violated Article 6 §7 and Article 7 §1 of the Declaration of Covenants, Conditions and Restrictions for Waring Station, (the "HOA Declaration") and Part E of the Standards and Guidelines of the Architectural and Environmental Review Committee (the "AERC Guidelines"), requiring the homeowner to maintain the premises consistent with good property management. Complainant requested that the Commission order that the Respondent (i) remove the landscape borders in the front of the Subject Property or place appropriate shrubbery behind the borders, (ii) maintain the grass in the yard to less than ten inches in height as required by the governing documents; (iii) move the trash cans when required promptly following trash pick-up and (iv) remove all trash and other unsightly debris from the yard and keep the yard free of such conditions in the future. Complainant also requested that if Respondent did not comply with such orders, that the Complainant be permitted to enter the yard of the Subject property and correct those conditions at the cost and expense of the Respondent, at the rate of \$30 to remove trash cans, \$50 per mow to mow the grass and at a reasonable hourly rate for the other necessary clean-up services.

At the conclusion of the hearing, the Panel Chair advised that, due to the absence of the Respondent, the record would remain open for the next 10 days to allow for Respondent to present evidence for the Panel's review, provided that the Respondent had sufficient legal excuse for absence from the hearing. No further evidence was received, however.

Conclusions of Law and Discussion

Upon a review of the organizational documents of Waring Station Homeowners Association, the testimony and other evidence submitted as set forth above, the Panel concludes that Respondents have violated various provisions of the governing documents of the Association, specifically Article 6 §7 and Article 7 §1 of the Declaration of Covenants, Conditions and Restrictions for Waring Station, and Part E of the Standards and Guidelines of the Architectural and Environmental Review Committee. In particular, the Panel has determined:

1. Respondents have failed to adequately maintain their property in a manner consistent with good property management. Landscaping was started and was left unfinished, fences were in poor repair, trash cans were left outside too long after trash pick-up, grass was often unkempt and unmowed, and trash and debris were often left in the yard.
2. Article VII §1 of the HOA Declaration provides that if a homeowner fails to maintain his property, the Association may enter upon the property and "repair, maintain and restore" the lot at the expense of the homeowner, and that any such cost shall become a lien against the lot, enforceable in the same manner as the enforcement of the annual assessments of the Association.

ORDER

Based upon the evidence of record and for the reasons set forth above, it is this 3rd day of ~~September~~ October, 2003, by the Commission on Common Ownership Communities:

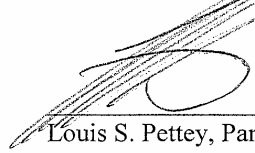
ORDERED, that within thirty (30) days following the date of this Order, Respondents shall correct all deficiencies in the maintenance of the Subject Property, including the removal of landscape borders or placement of appropriate shrubs behind the landscape borders, mowing of the grass to a height not in excess of 10 inches, removal of all trash and debris from the front and back yards, and the prompt removal of trash cans after collection; and it is further

ORDERED, that the Respondents shall continue to maintain the Subject Property hereafter in a manner consistent with the governing documents and this Order; and it is further

ORDERED, that if the Respondents fail to comply with the terms of this Order, Complainant may avail itself of the remedies provided in the HOA Declaration, including entering upon the Subject Property to make such corrections and assessing the reasonable costs of such corrections as a lien against the Subject Property.

Panel members Louis S. Pettey, Jeff Kivitz and Maggie Bruce concur unanimously in this decision.

Any party aggrieved by the action of the Commission may file an administrative appeal to the Circuit Court of Montgomery County, Maryland within 30 days from the date of this Order, pursuant to the Maryland Rules of Procedure governing administrative appeals.

A handwritten signature in dark ink, appearing to be 'Louis S. Pettey', is written over a horizontal line.

Louis S. Pettey, Panel Chair

Copies to:

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